



POLICE DEPARTMENT

May 5, 2015

MEMORANDUM FOR: Police Commissioner

Re: Detective James Baez
Tax Registry No. 923599
Narcotics Borough Brooklyn North
Disciplinary Case No. 2013-9688

The above-named member of the Department appeared before me on April 9, 2015,
charged with the following:

1. Said Detective James Baez, while on-duty and assigned to the Intelligence Division, on or about May 9, 2013, was discourteous to New York City Police Lieutenant Mario Rivera, in that while Lieutenant Rivera was giving a presentation, said Detective made personal comments about being glad he had left the Lieutenant's team and continued to make such comments after Lieutenant Rivera asked him to stop making such comments.

P.G. 203-09, Page 1, Paragraph 2 - PUBLIC CONTACT - GENERAL

The Department was represented by Marissa Gillespie, Esq. Department Advocate's Office, and Respondent was represented by Michael Lacondi, Esq. The Department called three witnesses: Mario Rivera (retired NYPD Lieutenant); Detective Humberto Morales; and Sergeant Jennery Rios. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

After evaluating the testimony and evidence presented at the hearing, and assessing the credibility of the witness, this tribunal finds that the preponderance of the evidence does not establish that Respondent engaged in sanctionable misconduct.

FINDINGS AND ANALYSIS

Four witnesses testified to being present at an Intelligence Division training meeting held on May 9, 2013. The meeting was mainly for new employees to the Intelligence Bureau. It is undisputed that Lieutenant Rivera gave a presentation during this meeting and that after giving his initial remarks he took questions from the audience. Someone asked him how to get into his unit. Respondent then said, "How do you get out of the unit?" The witnesses differed on how this was said and on what else was said during the exchange between Rivera and Respondent.

The charges in this case specify that Respondent, "made personal comments about being glad he had left the Lieutenant's unit and continued to make such comments after Rivera asked him to stop making such comments." Rivera testified that Respondent asked how to get out of the unit four times and that Respondent said he was glad he was off Rivera's team after he was told by Rivera to stop making comments. (Tr. 14-15). Respondent testified that he leaned over to the attendee sitting next to him, Police Officer Morales, and asked him one time, "How do you get out of the unit." Respondent said he repeated these words only when Rivera asked him what he said and that he then made no other comments. (Tr. 56-58).

I do not find Rivera's version of the exchange to be credible concerning comments made by Respondent, other than the ones admitted to by Respondent. At trial, we had the benefit of two independent witnesses who were present during the incident. Neither witness corroborated Rivera's testimony on this point. Unlike Rivera, who by his own testimony admitted he had a contentious relationship with Respondent before the incident, the other witnesses either did not have any prior relationship with Respondent, as in Rios's case (Tr. 36-37), or had only briefly known Respondent as a co-worker prior to the incident, as in Morales' case. (Tr. 27-28). Neither Morales, who was sitting right next to Respondent during the exchange, nor Rios, who

testified she heard the entire exchange until Rivera left the room, heard Respondent say any specific words other than, "How do you get out." (Tr. 32, 43-44). More importantly, Morales testified that Rivera asked Respondent to repeat what he said and that Respondent complied with this request by repeating it. Morales said that Rivera told Respondent to stop and Respondent did stop. (Tr. 30-32). Rios, who only heard the Respondent say, "How do you get out?" one time, testified that Rivera warned Respondent not to make further comments after that and while Respondent mumbled something and rolled his eyes, she did not hear any other specific comments even though she was standing right in the front of the room by Rivera and Respondent at that point. (Tr. 43-44, 46). Rios specifically stated she did not hear Respondent say he was glad he was out of here. (Tr. 43).

I find that Respondent's comment about how to get out of Rivera's unit was said at the meeting and that even though Morales and Respondent described it as being said under Respondent's breath, it was loud enough to be heard by the Lieutenant and Rios. I also find that this comment was made during the presentation since the question and answer segment was part of the presentation in this case. The comment, however, while inappropriate, does not substantiate the specific misconduct being charged in this case. The credible evidence does not support the charge that Respondent made personal comments about being glad he had left the Lieutenants' team or that he continued to make personal comments about being glad he had left the Lieutenant's team after he was told to stop making such comments.

Accordingly, this tribunal finds Respondent Not Guilty of the charge in this case.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Nancy R. Ryan".

Nancy R. Ryan
Assistant Deputy Commissioner – Trials

APPROVED

JUL 27 2015

WILLIAM J. BRATTON
POLICE COMMISSIONER